



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

MAY 10 2016

OFFICE OF
COMPLIANCE AND ENFORCEMENT

CONFIDENTIAL FOR SETTLEMENT PURPOSES ONLY
SENT BY CERTIFIED MAIL RETURN RECEIPT REQUESTED

Reply To: OCE-101

CT Corporation System
Registered Agent
CHS Inc. d/b/a CHS Connell Grain - Toppenish
505 Union Avenue Southeast Suite 120
Olympia, Washington 98501

Re: Notice of Violation of the Clean Air Act and Opportunity to Settle
Docket No. CAA-10-2016-0063

Dear Sir or Madam:

The U.S. Environmental Protection Agency ("EPA") is providing you with notice, pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, of its findings that CHS Connell Grain - Toppenish ("CHS") violated the CAA, 42 U.S.C. §§ 7401, *et seq.*, by not submitting its initial registration for the air pollution source located at 210 S. Track Rd, Toppenish, Washington until September 24, 2015, at least five years after the source began operation.

EPA has adopted basic air quality regulations under the CAA that apply to air pollution sources located on Indian Reservations in Idaho, Oregon, and Washington. These rules, known as the Federal Air Rules for Reservations ("FARR"), became effective on June 7, 2005, and are codified at 40 C.F.R. Part 49, Subparts C and M. The FARR provisions that apply within the Yakama Reservation are incorporated by reference at 40 C.F.R. § 49.11110 and include rules that require annual re-registration with EPA for specified types of air pollution sources.

As detailed in the enclosed Notice of Violation, EPA has determined that CHS violated the initial registration requirement at 40 C.F.R. § 49.138(e)(1). Failing to comply with the registration requirement is a violation of the FARR and the CAA. For such violations, Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19 authorize EPA to assess administrative penalties or bring a civil action in federal district court seeking civil penalties.

EPA uses the factors spelled out in Section 113 of the CAA, 42 U.S.C. § 7413, along with the *EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington* ("Penalty Guidelines") to determine the amount of penalty it will seek in CAA enforcement actions. A copy of the Penalty Guidelines is included with the enclosures. In this case, EPA has determined that an appropriate penalty to settle the violations is \$3,052. As explained in the enclosed penalty worksheet, EPA's penalty is based on your violation constituting an administrative violation that lasted for 51 months.

If you disagree with EPA's determinations, you may respond **within 30 days of your receipt of this Notice**. If you do not dispute EPA's determinations and wish to promptly resolve this matter, you may do so by registering your facility and accepting EPA's proposed terms of settlement. To accept EPA's proposed terms

of settlement, please sign and return the enclosed Consent Agreement and Final Order **within 30 days of your receipt of this offer.**

The Consent Agreement and the Final Order specify the terms of settlement that EPA is willing to accept to resolve the violation. Materials to assist you in this matter are enclosed. EPA's Small Business Resources Information Sheet is enclosed and will provide information on small business resources, which may be helpful to you.

If you accept these proposed terms of settlement, please sign the Consent Agreement and send it to:

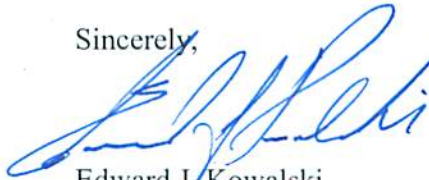
Grace Hwang, Attorney Advisor
Office of Regional Counsel
EPA Region 10
1200 Sixth Avenue, Suite 900
Mail Stop: ORC-113
Seattle, Washington 98101

On timely receipt of a signed Consent Agreement and correction of the violation, EPA will co-sign the Consent Agreement that assesses the agreed penalty and will issue the Final Order. Once the Consent Agreement and Final Order are filed, the Final Order will be effective and your penalty payment will be due within 30 days. Be aware that EPA generally issues a press release announcing the settlement.

If you have questions about EPA's allegations and settlement proposal, you may contact Grace Hwang, Attorney Advisor, at 206-553-8577 or hwang.grace@epa.gov. If you do not respond **within 30 days** or you choose to reject this settlement offer, EPA may file an administrative Complaint to resolve these allegations. EPA reserves the right to seek the maximum allowable penalty in litigation of this case.

Thank you for your prompt attention to this important matter.

Sincerely,



Edward J. Kowalski
Director

Enclosures

1. Notice of Violation
2. FARR Penalty Calculation Sheet for CHS Connell Grain - Toppenish
3. FARR Registration Compliance Assistance Materials
4. Small Business Resources Information Sheet
5. Consent Agreement and Final Order
6. EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington. 40 C.F.R. Part 49

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:)
)
CHS Inc.)
210 S. Track Rd.)
Toppenish, WA 98948)
)
Respondent.)
_____)

NOTICE OF VIOLATION

Pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, the United States Environmental Protection Agency ("EPA"), through the Director of the Office of Compliance and Enforcement, and upon the basis of available information, hereby issues the following Notice of Violation to CHS Inc. d/b/a CHS Connell Grain - Toppenish ("Respondent").

APPLICABLE STATUTES AND REGULATIONS

1. Pursuant to Sections 301(a) and 301(d)(4) of the CAA, EPA has adopted air quality regulations that apply to air pollution sources on Indian Reservations in Idaho, Oregon, and Washington, which are codified at 40 C.F.R. Part 49, Subparts C and M. These rules are known as the Federal Air Rules for Reservations ("FARR") and became effective on June 7, 2005.
2. The FARR provisions that apply on the Yakama Reservation are incorporated by reference at 40 C.F.R. § 49.11110.
3. 40 C.F.R. § 49.138, the rule for registration of air pollution sources and the reporting of emissions, incorporated by reference at 40 C.F.R. § 49.11110, requires a person who

owns or operates an air pollution source subject to the requirement to register the air pollution source with the EPA Regional Administrator by no later than February 15, 2007, if the source existed on the effective date of the regulatory provision, or within 90 days after beginning operation, in accordance with the requirements set out in 40 C.F.R. § 49.138(e).

4. An air pollution source is subject to the requirements of 40 C.F.R. § 49.138(d) if it does not meet the exemptions listed in 40 C.F.R. § 49.138(c).

5. 40 C.F.R. § 49.138(d), which is incorporated by reference at 40 C.F.R. § 49.11110, requires any person who owns or operates an air pollution source subject to this section on the Yakama Reservation, except for Part 71 sources (major sources), to register the source with the Regional Administrator in accordance with the requirements set out in 40 C.F.R. § 49.138(e).

6. 40 C.F.R. § 49.123(a), incorporated by reference at 40 C.F.R. § 49.11110, defines “owner or operator” as any person who owns, leases, operates, controls, or supervises an air pollution source.

VIOLATIONS

7. Respondent is a corporation, registered in the State of Washington, and is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

8. Respondent owns a facility on the Yakama Reservation, located at 210 S. Track Road, Toppenish, Washington, that is not a Part 71 source, as defined in 40 C.F.R. § 49.123.

9. Respondent has operated the facility located at 210 S. Track Road, Toppenish, Washington since at least 2010.

10. Respondent emits more than two tons of an air pollutant per year, does not meet the exemptions listed in 40 C.F.R. § 49.138(c), and is therefore subject to the rule for the

registration of air pollution sources and the reporting of emissions.

11. Respondent did not submit its initial FARR registration to the Regional Administrator until September 24, 2015.

12. The failure to submit an initial registration of an air pollution source within 90 days after beginning operation is a violation of 40 C.F.R. § 49.138(e)(1). Therefore, Respondent violated 40 C.F.R. § 49.138(e)(1), incorporated by reference at 40 C.F.R. § 49.11110.

ENFORCEMENT

13. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to impose penalties for past and continuing violations of the CAA, including issuance of an administrative penalty order assessing penalties of up to \$37,500 per day of violation at any time after the expiration of 30 days following the date on which notice of violation is issued. This Notice of Violation does not waive or limit EPA's right to any remedy available to it under the CAA.

14. This Notice of Violation shall become effective immediately upon issuance.

Issued at Seattle, Washington, this 10th day of May, 2016.


Edward J. Kowalski, Director
Office of Compliance and Enforcement